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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,299	08/02/2006	Takashi Umeno	100968-2-000161	6867

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EXAMINER	
ELHILO, EISA B	

ART UNIT	PAPER NUMBER
1796	

NOTIFICATION DATE	DELIVERY MODE
06/05/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

Office Action Summary	Application No.	Applicant(s)	
	10/588,299	UMENO, TAKASHI	
	Examiner	Art Unit	
	Eisa B. Elhilo	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 August 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *6-17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *6 and 7* is/are rejected.

7)☒ Claim(s) *8-17* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *02 August 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *11/17/06 & 8/2/06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claims 6-17 are pending in this application.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 6 and 7 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim1 of copending Application No. US 10/545,202. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of the copending application No. 10/545,202, teaches and discloses similar hair color composition comprising at least one water-soluble dye, alcohol-soluble acryl base resin of nonionic or anionic silicone base resin, lower alcohols and water as claimed in claim 6 and 7 (see claim 1, of the co-pending application No. 10/545,202). Therefore, this is an obvious formulation.

Although, claim 1 of the copending application no. 10/545,202, teaches and discloses similar hair dyeing compositions comprising similar compounds, it is not identical to the instant claims, because claim 1 of the copending application No. 10/545,202, ingredients in percentage amounts overlapped with the percentage amounts of dyeing ingredients recited by the instant claims. Therefore, the conflicting claims are not identical.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate such a coloring composition by optimizing the coloring ingredients in the composition in order to get the maximum effective amounts of these ingredients in the composition and would expect such a composition to have similar properties to those claimed, absent unexpected results.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

3. Claims 6 and 7 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 6,905,521 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-2 of the US Patent No. 6,905,521 B2, teach and disclose similar hair coloring compositions comprising acid dyes, silicone base resin, lower alcohols and water as claimed in claims 6-7 (see claims 1-2 of the US Patent No. 6,905,521 B2). Therefore, this is an obvious formulation.

Although, claims 1 and 2 of the US Patent No. 6,905,521 B2, teach and disclose similar hair dyeing compositions comprising similar dyeing ingredients, they are not identical to instant claims, because claims 1-2 of the US Patent No. 6,905,521 B2, teach and disclose dyeing

composition comprising acidic dyes as colorants, while the instant claims require basic dyes. Therefore, the conflicting claims are not identical.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate such a coloring composition by incorporating the basic dyes in the dyeing composition to arrive at the claimed invention and would expect such a composition to have similar properties to those claimed in the absent of contrary.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuchiya et al. (US 2003/0066142 A1) in view of Laurent et al. (2002/0046431 A1).

Tsuchiya et al. (US' 142 A1) teaches a hair dyeing composition comprising acidic dyes in the amounts of 0.01 to 3%, silicone base resin in the amounts of 0.1 to 10%, lower alcohols in the amounts of 30-80% and 5 to 50% of water as claimed in claims 6-7 (see abstract).

The instant claims differ from the reference by reciting a dyeing composition comprising basic dyes.

Laurent et al. (US' 431 A1) teaches in analogous art of hair dyeing formulation, a dyeing composition comprising direct dyes that conventionally been used in direct dyeing compositions, wherein in these direct dyeing are selected from cationic (basic) or anionic (acidic) dyes (see page 13, paragraph, 0317).

Therefore, in view of the teaching of the reference, one having ordinary skill in the art at the time the invention was made, would be motivated to modify the dyeing composition of Tasuchiya et al. (US' 142 A1) by incorporating the basic dyes as taught by Laurent et al. (US' 431 A1) to arrive at the claimed invention because Laurent et al. clearly teaches the equivalence of these dyes as the conventionally been used in dyeing compositions, and, thus, a person of the ordinary skill in the art would have a motivation to use any of these direct dyes (cationic or anionic) in the dyeing compositions and would expect such a composition to have similar properties to those claimed, absent unexpected results.

Allowable Subject Matter

5. Claims 8-17 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6 The remaining references listed on from PTO-1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pyon Harold can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eisa B Elhilo/
Primary Examiner, Art Unit 1796
May 31, 2008